



OFFICE of the ATTORNEY GENERAL
GREG ABBOTT

May 15, 2003

Mr. Thomas H. Fowler
Assistant County Attorney
County of Grayson
Grayson County Justice Center, Ste. 116A
Sherman, Texas 75090

OR2003-3282

Dear Mr. Fowler:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 181059.

The Grayson County Sheriff's Office (the "sheriff") received a request for "[a]ny on-board or audio tape made of [a specified stop] that led to the arrest of [a specified person]," as well as a copy of a specified corporal's personnel file. You state that the sheriff does not maintain an audiotape of the stop.¹ You claim that a responsive videotape is excepted from disclosure pursuant to section 552.108 of the Government Code. You indicate that portions of the requested personnel file may be excepted from disclosure pursuant to sections 552.101 and 552.130 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted representative sample videotape.²

¹ We note that it is implicit in several provisions of the Public Information Act (the "Act") that the Act applies only to information already in existence. See Gov't Code §§ 552.002, .021, .227, .351. The Act does not require a governmental body to prepare new information in response to a request. See Attorney General Opinion H-90 (1973); see also Open Records Decision Nos. 87 (1975), 342 at 3 (1982), 416 at 5 (1984), 452 at 2-3 (1986), 555 at 1-2 (1990), 572 at 1 (1990); *Economic Opportunities Dev. Corp. of San Antonio v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.-San Antonio 1978, writ dismissed). A governmental body must only make a good faith effort to relate a request to information which it holds. See Open Records Decision No. 561 at 8 (1990).

² We assume that the representative sample videotape submitted to this office is truly representative of the requested videotapes as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open

Initially, we must address the procedural requirements of section 552.301 of the Government Code. Section 552.301(e) requires that a governmental body that requests an attorney general decision under section 552.301(a) must, within a reasonable time, but not later than the fifteenth business day after the date of receiving the written request, submit to the attorney general, among other items, a copy of the specific information requested, or representative samples of it, if a voluminous amount was requested, labeled to indicate which exceptions apply to which parts of the copy. *See* Gov't Code § 552.301(e). To date, the sheriff has not submitted the requested personnel file to us for our review.³ Thus, we find that the sheriff failed to comply with section 552.301 of the Government Code in requesting this decision from us.

Because the sheriff failed to comply with the procedural requirements of section 552.301 with regard to the requested personnel file, this particular information is now presumed public. *See* Gov't Code § 552.302; *see also* *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ); *City of Houston v. Houston Chronicle Publ'g Co.*, 673 S.W.2d 316, 323 (Tex. App.--Houston [1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982). The sheriff must demonstrate a compelling interest in order to overcome the presumption that this information is now public. *See id.* Normally, a compelling interest is demonstrated when some other source of law makes the requested information confidential or when third party interests are at stake. *See* Open Records Decision No. 150 at 2 (1977). Although the sheriff claims that portions of the requested personnel file may be excepted from disclosure pursuant to sections 552.101 and 552.130 of the Government Code, we have no basis for concluding that these portions are so excepted under those exceptions to disclosure because the sheriff did not submit any portion of the requested personnel file to us for our review. Accordingly, we conclude that the sheriff must release the entirety of the requested personnel file to the requestor.

However, we caution the sheriff that section 552.352 of the Government Code imposes criminal penalties for the release of confidential information. *See* Gov't Code § 552.352. Prior to releasing the requested personnel file, the sheriff should ensure that it does not contain any such confidential information. If the sheriff believes that portions of the requested personnel file are indeed confidential and may not lawfully be released, the sheriff must challenge this ruling in court as outlined below.

We now address your section 552.108 claim regarding the submitted videotape. Section 552.108 provides in pertinent part that information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted

records letter does not reach and, therefore, does not authorize the withholding of any other requested videotapes to the extent that they contain substantially different types of information than that reflected on the videotape that has been submitted to this office.

³ Although you state that the requestor "verbally agreed" to resubmit his written request for the personnel file, we note that we received no written statement from the requestor that supports your assertion.

from disclosure if "release of the information would interfere with the detection, investigation, or prosecution of crime[.]" Gov't Code § 552.108(a)(1). Generally, a governmental body claiming section 552.108(a)(1) as an exception to disclosure of requested information must demonstrate, if the information does not supply the explanation on its face, how and why the release of the requested information would interfere with law enforcement or prosecution. See Gov't Code §§ 552.108(a), (b), .301(e)(1)(A); see also *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the submitted videotape relates to a case in which charges are pending. Based on our review of your representation and the submitted videotape, we find that the release of the videotape "would interfere with the detection, investigation, or prosecution of crime." Gov't Code § 552.108(a). Accordingly, we conclude that the sheriff may withhold the submitted videotape in its entirety pursuant to section 552.108(a)(1) of the Government Code. We note, however, that the sheriff maintains the discretion to release all or part of the videotape that is not otherwise confidential by law. See Gov't Code § 552.007.

In summary, the sheriff must release the entirety of the requested personnel file to the requestor. The sheriff may withhold the submitted videotape in its entirety pursuant to section 552.108(a)(1) of the Government Code.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

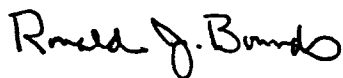
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Ronald J. Bounds
Assistant Attorney General
Open Records Division

RJB/lmt

Ref: ID# 181059

Enc. Submitted videotape

c: Mr. David J. Moraine
Crosbie & Moraine, L.L.P.
419 South Carroll, 2nd Floor
Denton, Texas 76201
(w/o enclosure)